IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1534 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHREE DIGVIJAY CEMENT CO.LTD.

Versus

RUPINDER KAUR SURI

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Appearance:

1. First Appeal No. 1534 of 1986
MR Saurabh Amin for KS NANAVATI for Petitioner
MR R.V.Dagli for PM THAKKAR for Respondents No. 1-4
NOTICE SERVED for Respondent No. 5

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CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 08/11/2001

C.A.V.JUDGEMENT

(Per : MR.JUSTICE SHARAD D.DAVE)

This appeal is filed against the award passed by the learned 3rd Jt.Civil Judge (S.D.), Jamnagar in Special Civil Suit No. 37 of 1984 on 30.9.86 awarding Rs.3,31,800/- to the plaintiffs No. 1 to 4 with running interest @ 12% from the date of the suit till realisation with proportionate costs.

The respondents herein, as legal heirs and representatives of the deceased, have filed the above referred suit for damages from the appellant herein on the ground that on 2.7.83 the deceased was on his duty at Mill No. 4 when all of a sudden the clinker overflew and fell upon him as a result of which he received burnt injuries. The deceased Mahendrasinh Suri died after 3 days during the treatment and as per the respondents the accident occurred due to the negligence of the appellant.

It is the case of the present appellant that the learned trial court has erred in granting 16 multiplier and that the same would not exceed 12. There is also another grievance on the part of the present appellant that an insurance amount of Rs.30,600/- and Rs.15,000/granted as ex-gratia amount to the heirs are not considered by the trial Court and the amount of compensation is over and above the above referred amounts. It is also the case that the learned judge has erred in concluding that the deceased would normally have spent 1/4th of his income on himself, whereas it is accepted that this proportion is normally 1/3rd.

Mr.Saurabh Amin, learned counsel for the appellant has urged that the multiplier given by the Trial Judge is disproportionate and against the normal practice as held by the Apex Court in case of U.P.Road Transport Corporation and others V/s Trilokchandra and others reported in 1996(4) SCC page 362. Learned Counsel submitted that though the respondent no. 1, the widow of deceased Mahendrasing Suri, accepted Rs.30,600/towards the Accident Insurance Policy and Rs.15,000/towards the ex-gratia payment, Civil Suit no. 37 of 1984 was filed in the trial Court for these purposes. Learned Counsel for the petitioner relied upon the letter at exh. 40 dated 25.7.1973. By calculating the amount as per the judgment in case of U.P.Road Transport Corporation and others (supra), learned counsel for the appellant submitted that at the most, respondent nos. 1 to 4 are entitled for sum of approximately Rs.1,50,000/- only and not the amount held entitled by the tribunal. Under the

circumstances, learned counsel for the appellant pleaded that this first appeal be allowed by modifying the award passed by the Tribunal.

Mr.R.V.Dagli, learned advocate for Mr.P.M.Thakkar, learned counsel for the respondents submitted that there is no need for this Court to interfere with the award passed by the learned trial Judge, in view of the fact that the deceased was 41 years old when he died in the accident in the premises of the appellant company, and the multiplier given by the trial court is just and appropriate. Mr.Dagli, L.A. for the respondents relied on the judgment reported in 1993 A.C.J.(Delhi) page 1216 in case of Jaising and others Vs. S.R.Vohra and others, 1994 A.C.J. (H.P.) page 1183 in case of Krishnakapoor and others V/s Himachal Road Transport Corporation and also relied on the judgment of the Apex Court reported in A.I.R. 1994(SC) page 1631 in case of General Manager, Kerala State Road Transport Corporation, Trivendram V/s Ms. Susamma Thomas and others.

We have heard the learned counsel for the parties and also gone through the authorities cited by them. In the case of Jaising and others (Supra), the deceased was 41 years old and he was Ex-Subedar in Military and getting Rs.78/- as pension and earning Rs.300/- per month by plying taxi. The Tribunal assessed dependency at Rs.250/- per month and adopted the multiplier of 18 and awarded Rs.45,900/-. The Delhi High Court adopted the multiplier of 29 and enhanced the awarded amount to Rs.87,000/-.

The H.P.High Court, while dealing with the case of Krishna Kapoor and others (supra), relied on the judgment of the Apex Court in para 44 of the judgment in case of Hardeo Kaur V/s Rajasthan State Road Transport Corporation reported in 1992 A.C.J. page 300(SC), wherein multiplier of 20 was adopted. In that case, deceased was aged 36 years; he was a Major in Army and the dependents were widow and three minor children. In that case, the Tribunal adopted the multiplier of 20 and made deduction of 1/3rd and that award was confirmed by the High Court of Himachal Pradesh. The Apex Court assessed dependency by adopting multiplier of 24, disallowed the deduction and enhanced the award.

In case of G.M., Kerala State Road Transport Corporation, Trivandrum (Supra), the Apex Court reiterated that the multiplier method is a sound method

for the accident compensation and further pointed out that there should be no departure from the multiplier method. Some judgments of the High Courts have justified a departure from the multiplier method on the ground that Section 110(b) of the Motor Vehicles Act, 1939 in so far as it envisages the compensation to be `just', the statutory determination of a `just' compensation would unshackle the exercise from any rigid formula. It must be borne in mind that the multiplier-method is the accepted method of ensuring a `just' compensation which will make for uniformity and certainty of the awards.

In case of U.P.Road Transport Corporation and others (supra), relied on by learned counsel Mr.Amin for Mr.K.S.Nanavati for the appellant-company, while taking into consideration the judgment of G.M.Kerala State Transport Corporation, Trivandrum (Supra), the Apex Court observed in para 4 as under :

"India is one of the countries with the highest number of road accidents. Motor accidents are every day affairs. A large number of claims for compensation for injury caused by road accidents are pending in various Motor Accident Claims Tribunal. In a fatal accident the dependents of the deceased are entitled to compensation for the loss suffered by them on account of the death. The most commonly practised method of assessing the loss suffered is to calculate the loss for a year and then to capitalise the amount by a suitable multiplier. To that is added the loss suffered on account of loss of expectation of life and the like. The Tribunals and High Courts have adopted divergent methods to determine the suitable multiplier. Even this Court has not been uniform; maybe because the principle on which this method came to be evolved has been forgotten. It has, therefore, become necessary to examine the law and to state the correct principles to be adopted."

The Apex Court while coming to the conclusion of multiplier to be taken into account has observed in paragraph 15 as under :

"We thought it necessary to reiterate the method of working out 'just' compensation because, of late, we have noticed from the awards made by Tribunals and Courts that the principle on which the multiplier method was developed has been lost sight of and once again a hybrid method based on the subjectivity of the Tribunal/Court has

> surfaced, introducing uncertainty and lack of reasonable uniformity in the matter of determination of compensation. It must be realized that the Tribunal/ Court has to determine a fair amount of compensation awardable to the victim of an accident which must be proportionate to the injury caused. The two English decisions to which we have referred earlier provide the guidelines for assessing the loss occasioned to the victims. Under the formula advocated by Lord Wright in Davies, the loss has to be ascertained by first determining the monthly income of the deceased, then deducting therefrom the amount spent on the deceased, and thus assessing the loss to the dependents of the deceased. The annual dependency assessed in this manner is then to be multiplied by the use of an appropriate multiplier. Let us illustrate : X, male, aged about 35 years, dies in an accident. He leaves behind his widow and 3 minor children. His monthly income was Rs.3,500/-. First, deduct the amount spent on X every month. The rough and ready method hitherto adopted where no definite evidence was forthcoming, was to break up the family into units, taking two units for an adult and one unit for a minor. Thus X and his wife make 2 + 2 = 4 units and each minor one unit i.e. 3 units in all, totalling 7 units. Thus the share per unit works out to Rs.3,500/7 = Rs.500 per month. It can thus be assumed that Rs.1000 was spent on X. Since he was a working member some provision for his transport and out-of pocket expense has to be estimated."

The Apex Court further stated in the last lines of para 16 that "However as observed earlier and as pointed out in Susamma Thomas Case, usually English courts rarely exceed 16 as the multiplier. Courts in India too followed the same pattern till recently when tribunals/courts began to use a hybrid method of using Nance method without making deduction for imponderables."

By going through the judgment of the Trial Court, it appears that the court has taken into consideration the monthly income of the deceased at Rs.1,436.50ps. and taken into consideration the age of the respondent no. 5, father of the deceased being 71 years of age, the age of respondent no. 1-widow of the deceased being 31 years, and the age of minor children being 11 years, 5 years and 3 years respectively, Rs.3,16,800/- was awarded by taking multiplier of 16 being loss to the estate,

Rs.20,000/towards the loss of gratuity, Rs.10,000/towards the expectancy of life or conventional charges, thus making in all Rs.3,46,800/- and deducting Rs.15,000/paid towards ex-gratia amount, payment of Rs.3,31,800/was awarded to respondent nos. 1 to 4 only.

In view of the Apex Court judgment in case of U.P.Road Transport Corporation and others (supra), we are partly allowing this appeal filed by the appellant-original defendant and come to the conclusion that the respondent nos. 1 to 4 are entitled to the following amount :

We have taken into consideration the salary of the deceased at approximately Rs.2,000/- per month including bonus, prospects of further earning etc. and taking 1/3rd of the income as his personal expenses, the dependency income would come to Rs. 1,330/- rounding to Rs.1,350/- which would annually come to Rs.16,200. Taking 12 multiplier, the amount would come to Rs.1,94,400/- and by adding Rs.10,000/- towards the expectancy of life and the conventional charges the total would come to Rs.204,400/-. Out of the aforesaid amount, the amount of Rs.15,000/- paid to the respondents towards the ex-gratia payment and Rs.30,600/- towards Group Insurance Scheme are required to be deducted and the net amount would come to Rs.1,58,400/-. The aforesaid amount is required to be paid to the respondents herein with 12% interest with costs.

The respondents herein filed a C.A.no. 2957 of 1986 in which an order was passed on 23.12.86 by this Court giving liberty to the respondent no. 1 to withdraw an amount of approximately Rs.83,000/- on furnishing security. Another order was passed in this C.A. on 22.6.87 that the aforesaid amount was withdrawn by the respondent no. 1 and that the remaining amount shall be deposited in nationalized banks and the interest thereon shall be payable to the mother i.e. respondent no. 1 and even on attaining majority, the respondents no. 2 to 4 will not be permitted to withdraw the amount. There was another C.A. filed being C.A. no. 9492 of 1998 in which order was passed permitting the respondents to withdraw Rs.50,000/-.

Thus, out of the total amount of Rs.1,58,400/- as awarded above, the amount of Rs.83,000/- + Rs.50,000/(which are already withdrawn by the respondents) is required to be deducted, which comes to Rs.25,400/-. This amount with proportionate interest is required to be equally distributed between the respondents no. 3 & 4 and the same shall be invested in the nationalized bank in a fixed deposit. The interest,

thereon, should be payable to the mother. On attaining majority, the respondents shall be at liberty to withdraw the amount.

The present appeal is partly allowed with no order as to costs.

( B.C.PATEL, J )

( SHARAD D DAVE, J )

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